

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JERMAINE WILLIAMS,

Petitioner,

vs.

JORGE PASTRANA,

Respondent.

CASE NO. 06-61536-CIV-DIMITROULEAS
(00-6312-CR-DIMITROULEAS)

**FINAL JUDGMENT AND ORDER DISMISSING WRIT OF HABEAS
CORPUS, WITHDRAWING REFERENCE**

____THIS CAUSE is before the Court on Petitioner's (Williams) October 6, 2006 Petition For Writ of Habeas Corpus [DE-1] and the Court having reviewed the Court file, finds as follows:

1. On November 2, 2000 Williams was indicted and charged with Hobbs Act Conspiracy, Attempted Hobbs Act Robbery and Use of a Firearm during a Crime of Violence. [DE-14].

2. On January 15, 2002 Williams pled guilty, pursuant to a plea agreement to all three counts. Count III was specified to carry a maximum sentence of life in prison and a minimum sentence of ten (10) years in prison. [DE-78].

3. On April 16, 2002, Williams was sentenced to eighty (80) months in prison, concurrently on the first two counts and a consecutive one hundred twenty (120) months in prison on Count Three. [DE-86, 87].

4. On August 5, 2003, the Eleventh Circuit Court of Appeals vacated the sentence. [DE-95]. U.S. v. Williams, 340 F. 3d 1231 (11th Cir. 2003).

5. On December 4, 2003, this Court re-sentenced Williams to sixty-five (65) months on

the first two counts and a consecutive one hundred twenty (120) months on Count Three. [DE-99].

6. Williams' conviction became final ten (10) days later when he did not file an appeal. Mederos v. U.S., 218 F. 3d 1252, 1253 (11th Cir. 2000)>

7. Williams contends that his sentence on Count Three violates double jeopardy as multiple punishment for the same conduct. Williams argues that the discharge of a firearm alleged in Count Three is also an element of a Hobbs Act Robbery. However, one can be convicted of either conspiracy to Rob or Attempted Robbery without discharging a firearm. Double jeopardy is not violated. U.S. v. Pearson, 203 F. 3d 1243, 1267-68 (10th Cir.) cert.denied, 120 S. Ct. 2734 (2000). Moreover, Congress can impose cumulative punishments through two different statutes prohibiting the same conduct. U.S. v. Overstreet, 40 F. 3d 1090, 1094-95 (10th Cir. 1994) cert. denied, 115 S. Ct. 1970 (1995). Williams also complains that § 924(c)(1)(A)(i) mandates a minimum five (5) year sentence for the use of a firearm while § 924(c)(1)(A)(iii) mandates a minimum ten (10) year sentence for the discharge of a firearm. Williams argues that since the use of a firearm includes discharging it, that a ten (10) year sentence would constitute double jeopardy. However, there is no double jeopardy violation by a single conviction of a crime divided by degrees. Finally, Williams contends that there are extenuating circumstances that caused the delay in his filing this petition.

8. A Writ of Habeas Corpus under § 2241 is not proper when it concerns the legality of a sentence. See Cradle v. U.S., 290 F. 3d 536, 538-39 (3d Cir. 2002). Normally, this Court would give Williams the option of converting the petition to a motion to vacate under 28 U.S.C. § 2255, warning him about the consequences of successive petitions. Castro v. U.S., 124 S. 786

(2003). Here, such an action would be futile as any petition reclassified as a motion to vacate would be time-barred.¹ No adequate grounds for equitable tolling have been alleged, and if alleged, Williams likely would not prevail on the merits.

Wherefore, Williams' Habeas Corpus Petition [DE-1] is Dismissed.

The Reference to Magistrate [DE-2] is Withdrawn.

The Clerk shall close this case and deny any pending motions as Moot.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this
18th day of October, 2006.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:

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Thomas Lanigan, AUSA

Honorable Patrick A. White, US Magistrate Judge

¹Should Williams choose to file a motion under § 2255, he would not be prejudiced by this dismissal as it would already have been time-barred.

